



Agenda Date: 07/29/09

Agenda Item: 2A

STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE PETITION OF PIVOTAL)	ORDER ADOPTING
UTILITY HOLDINGS INC., d/b/a ELIZABETHTOWN)	INITIAL DECISION
GAS COMPANY TO RECONCILE ITS PERIODIC)	AND STIPULATION
BASIC GAS SUPPLY SERVICE RATE)	
)	DOCKET NO. GR08050365

(SERVICE LIST ATTACHED)

BY THE BOARD:

On May 30, 2008, Pivotal Utility Holdings, Inc. d/b/a Elizabeth Gas Company ("Elizabethtown" or "Company") filed a petition with the New Jersey Board of Public Utilities ("Board") requesting authorization to increase its then current Periodic Basic Gas Supply Service rate ("BGSS-P") from \$1.0339 per therm (including tax) to \$1.3561 per therm, (including tax) to be effective October 1, 2008. Elizabethtown also reserved the right to self-implement additional increases in the BGSS-P rate on December 1, 2008 and February 1, 2009, respectively pursuant to the mechanism established in the Board's Generic BGSS Order in Docket No. GX01050304, dated January 6, 2003 ("BGSS Clause Mechanism").

Public hearings on the 2008 BGSS petition, presided over by Board appointed Legal Specialists, were held in Rahway, New Jersey and Flemington, New Jersey on August 12 and August 18, 2008, respectively. Two members of the public appeared to speak out against the proposed rate increase at the Flemington hearing. No one appeared at the Rahway hearing. The public hearings were preceded by notices in newspapers of general circulation throughout the Company's service territory.

Representatives of the Company, BPU Staff, and the Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel"), the only parties to this proceeding (collectively the "Parties"), discussed the matters at issue. As a result of those discussions, the Parties entered into a Stipulation for Provisional BGSS-P Rates dated September 29, 2008. The Parties agreed to reduce the requested increase in Elizabethtown's BGSS-P rate from the pending rate request of \$1.3561 per therm, inclusive of all taxes, to \$1.2801 per therm, inclusive of all taxes, due to a steady decline in gas costs as reflected in the New York Mercantile Exchange ("NYMEX") futures price. The Parties recommended that the Board approve a rate of \$1.2801 per therm, inclusive of all applicable taxes, on a provisional basis, subject to refund. By Order dated October 3, 2008, the Board approved the provisional rate.

On October 15, 2008, the Company's filing was transmitted to the Office of Administrative Law ("OAL") as a contested case.

On June 17, 2009, the Parties executed a second stipulation ("Stipulation") agreeing that the provisional BGSS-P rate of \$1.2801 per therm inclusive of all applicable taxes should become the final rate for the period. The Parties also agreed 1) to meet within ninety days of the issuance of a Board Order in this docket, to review Elizabethtown's current hedging program and develop new hedging guidelines, if necessary, to apply prospectively; 2) that the Company will begin providing Staff and Rate Counsel with quarterly reports that identify the total monthly margins from April 1, 2008 forward that are achieved by its asset manager, Sequent Energy Marketing L.P., under the asset management agreement; and 3) in Elizabethtown's next BGSS proceeding the Company shall submit a comparison of the historic and projected costs of Elizabethtown's bundled peaking supplies and on-system liquefied natural gas supply.

An Initial Decision was issued by Administrative Law Judge ("ALJ") Walter Braswell approving the June 17, 2009 Stipulation. The ALJ found that the Parties voluntarily agreed to the stipulation and that the stipulation fully disposes of all issues in controversy, is reasonable and is consistent with the law.

DISCUSSION AND FINDING

The Board has reviewed the record to date in this proceeding including ALJ Braswell's June 17, 2009 Initial Decision and the June 17, 2009 Stipulation. The Board HEREBY FINDS the Initial Decision and Stipulation to be reasonable and in the public interest and in accordance with the law. Accordingly, the Board HEREBY ADOPTS the Initial Decision in its entirety and HEREBY INCORPORATES the terms of the June 17, 2009 Stipulation as if fully set forth herein.

The Board HEREBY ORDERS

- 1) that the Parties meet within ninety (90) days of this Order to review Elizabethtown's current hedging program and develop new hedging guidelines, if necessary, to apply on a prospective basis,
- 2) that within thirty (30) days of that meeting, the Company shall report the results of the discussions to the Board;
- 3) that the Company begin providing Staff and Rate Counsel with quarterly reports that identify the total monthly margins from April 1, 2008 forward that are achieved by its asset manager, Sequent Energy Marketing L.P., under the asset management agreement; and
- 4) that the Company shall submit a comparison of the historic and projected costs of its bundled peaking supplies and on-system liquefied natural gas supply in its next BGSS proceeding.

The Company's BGSS costs will continue to be subject to audits similar to the Company's other costs. This Decision and Order shall not preclude the Board from taking any such actions deemed to be appropriate as a result of any such audit. These changes shall become effective upon the date of the issuance of a written Board Order in this matter.

The Company is HEREBY DIRECTED to file tariff sheets that conform to the terms and conditions of this Order within ten (10) days from the date of this Order.

DATED: 7/31/09

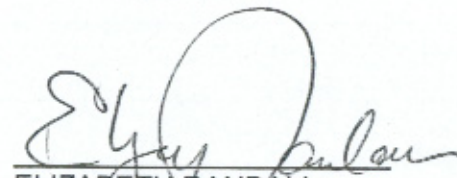
BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT

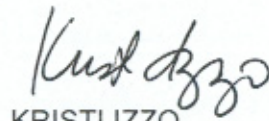

FREDERICK F. BUTLER
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

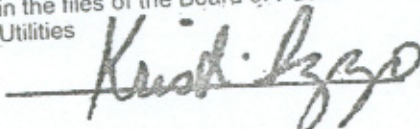

NICHOLAS ASSELTA
COMMISSIONER


ELIZABETH RANDALL
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities



**In the Matter of the Petition of Pivotal Utility Holdings Inc., d/b/a Elizabethtown Gas
Company to Reconcile its Periodic Basic Gas Supply Service Rate
Docket No. GR08050365**

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. PUC 13104-08

AGENCY DKT. NO. GR 08050385

CMS
BOSLEY
RPA
GERSTEN
PASKO
TENZER
COMBS
ENERGY

IN THE MATTER OF THE PETITION OF PIVOTAL UTILITY
HOLDINGS, INC. d/b/a ELIZABETHTOWN GAS
COMPANY TO RECONCILE ITS PERIODIC BASIC GAS
SUPPLY SERVICE RATE,

Kenneth T. Maloney, Esq., for Pivotal Holdings, Inc. d/b/a Elizabethtown Gas

Henry Ogden, Esq. and Kurt Lewanowski, Esq. (Division of Rate Counsel)

Arlene Pasko and Geoffrey Gersten, Deputy Attorney Generals, for
respondent (Anne Milgram, Acting Attorney General of New Jersey,
attorney)

Record Closed: June 17, 2009

Decided: June 17, 2009

BEFORE WALTER M. BRASWELL, ALJ:

On October 29, 2008 this matter was transmitted to the Office of Administrative Law (OAL) for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to-15 and N.J.S.A. 52:14F 1 to- 13. The matter was scheduled for a telephone pre-hearing on November 13, 2008 at which time hearings were scheduled for June 2 & 3, 2009. Prior to the hearings the parties engaged in extensive settlement discussions and requested an adjournment. On June 17, 2009 the undersigned received the fully executed settlement which is incorporated herein by reference.

I have reviewed the record and terms of the Stipulation of Settlement and **FIND:**

1. The parties have voluntarily agreed to the settlement as evidenced by the signatures of the parties or their representatives.
2. The settlement fully disposes of all issues in controversy and is consistent with law.

I **CONCLUDE** that the agreement meets the requirements of N.J.A.C. 1:1-19.1 and therefore, it is **ORDERED** that the parties comply with the settlement terms and that these proceedings be and are hereby concluded.

I hereby **FILE** my initial decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or reject this decision within forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

June 17, 2009

DATE

Walter M. Braswell

WALTER M. BRASWELL, ALJ

Date Received at Agency: 6/22/09

Frederick Long

Date Mailed to Parties:

ljb



CULLEN and DYKMAN LLP

FORWARDED
BY MAIL

JUN 22 AM 11:46

2009 JUN 22 AM 11:47

1101 Fourteenth Street, N.W.
Washington, D.C. 20005-5600

BOARD OF PUBLIC UTILITIES
NEWARK, N.J.

Telephone (202) 223-8890 • Facsimile (202) 457-1405
NEWARK, N.J.

June 17, 2009

VIA FAX (973) 648-6124

Honorable Walter Braswell
Administrative Law Judge
Office of Administrative Law
33 Washington Street
Newark, New Jersey 07102

RECEIVED
MAIL ROOM
09 JUN 19 PM 1:23
BOARD OF PUBLIC UTILITIES
NEWARK, N.J.

Re: In The Matter Of The Petition Of Pivotal Utility Holdings, Inc. d/b/a
Elizabethtown Gas To Reconcile Its Periodic Basic Gas Supply Service Rate
BPU Docket No. GR08050365, OAL Docket No. PUCRA-13104-08

Dear Judge Braswell:

Enclosed in the above proceeding is a Stipulation executed on behalf of Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas ("Elizabethtown" or "Company"), the Department of the Public Advocate, Division of Rate Counsel and the Staff of the Board of Public Utilities; the only parties to the above proceeding. The Stipulation would, if approved by the Board of Public Utilities, resolve all issues in the above matter.

The parties to the Stipulation request that Your Honor issue an Initial Decision recommending approval of the Stipulation as soon as possible. If you have any questions concerning the Stipulation, please contact me. Thank you for your assistance and patience in helping us to resolve this matter.

Yours truly,

Kath FM

Kenneth T. Maloney

Of Counsel

Pivotal Utility Holdings, Inc.
d/b/a Elizabethtown Gas

cc: Honorable Kristi Izzo
Attached Service List

*CMS
Bislow
Petrovich
Energy*

Founded 1850

BROOKLYN

LONG ISLAND

MANHATTAN

WASHINGTON, D.C.

NEW JERSEY

IN THE MATTER OF THE PETITION OF
PIVOTAL UTILITY HOLDINGS, INC. d/b/a ELIZABETHTOWN GAS
TO REVISE ITS BGSS-P RATE
BPU DOCKET NO. GR08050365

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STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

-----X
In The Matter Of The Petition Of Pivotal Utility :
Holdings, Inc. d/b/a Elizabethtown Gas To :
Reconcile Its Periodic Basic Gas Supply : BPU Docket No. GR08050365
Service Rate : OAL Docket No. PUCRA-
-----X 13104-08
FINAL STIPULATION

APPEARANCES:

Kenneth T. Maloney, Pivotal Utility Holdings, Inc., d/b/a Elizabethtown Gas

Henry M. Ogden and Kurt S. Lewandowski, Assistant Deputy Public Advocates, Department of the Public Advocate, Division of Rate Counsel (Ronald K. Chen, Public Advocate, Stefanie A. Brand, Director)

Geoffrey Gersten, Deputy Attorneys General, for the Staff of the New Jersey Board of Public Utilities (Anne Milgram, Attorney General of New Jersey)

To: Honorable Walter Braswell
Administrative Law Judge

BACKGROUND

On May 30, 2008, Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas, ("Elizabethtown" or "Company") filed a Petition ("May 30 Petition") with the Board of Public Utilities ("Board" or "BPU") in BPU Docket No. GR08050365 to revise its Periodic Basic Gas Supply Service ("BGSS-P") rate for the period October 1, 2008 through September 30, 2009. In its May 30 Petition, Elizabethtown proposed to increase its then current BGSS-P rate from \$1.0339 per therm inclusive of all applicable taxes to \$1.3561 per therm inclusive of all applicable taxes to become effective October 1, 2008. Elizabethtown also reserved the right to implement additional self-implementing increases in the BGSS-P rate on December 1, 2008 and February 1, 2009, respectively.

The Company's filing was transmitted to the Office of Administrative Law as a contested case. Notices setting forth the requested rate change and the dates of the public hearings were placed in newspapers having circulation within Elizabethtown's service territory and served on the county executives and clerks of all municipalities in the Company's service territory. Public hearings concerning the Company's Petition were held in Flemington, New Jersey on August 18, 2008 and Rahway, New Jersey on August 12, 2008. Two members of the public appeared at the public hearing in Flemington and generally opposed an increase in rates. Following the hearings, Elizabethtown, the Board's Staff and the Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel") (collectively, the "Parties") executed a "Stipulation for Provisional Rates" ("Provisional Stipulation"). Pursuant to the Provisional Stipulation, the Parties agreed that the Company would reduce the requested increase in its BGSS-P rate from \$1.3561 per therm to \$1.2801 per therm, inclusive of all taxes, and that the revised rate would become effective on a provisional basis, subject to refund and the action of further proceedings in this docket. The current projected increase in revenues to the Company, net of applicable taxes, is \$51.6 million through September 30, 2009. The Provisional Stipulation was approved by the Board by Order dated October 3, 2008. In accordance with that Order, Elizabethtown implemented its increased BGSS-P rate of \$1.2801 per therm, inclusive of all taxes, as of October 3, 2008.

The Parties engaged in discovery and discussed the remaining matters at issue in this proceeding. As a result of those discussions, the Parties have resolved all remaining issues in this proceeding in accordance with the Stipulation set forth below.

STIPULATION

Based upon and subject to the terms and conditions set forth herein, the Parties stipulate as follows:

1. Rates. The Company's BGSS-P rate of \$1.2801 per therm shall become final and shall remain in effect until revised in accordance with applicable laws and regulations. Such rates are subject to audit by the Board.

2. Terms of Stipulation.

A. Hedging. Within 90 days of the Effective Date as defined below, the Parties will convene a technical conference to review the Company's current hedging program and develop new hedging guidelines, if any, to apply prospectively. Given the ongoing volatility in the natural gas commodity markets and the recent audit of hedging activities conducted by Pace Consulting *et al.*, the Parties believe that it is appropriate to undertake a review of the Company's hedging practices at this time.

B. Asset Management Reporting Requirements. Prospectively, the Company will provide the Parties with quarterly reports setting forth the total monthly margins achieved by its asset manager, Sequent Energy Marketing L.P. under its Asset Management Agreement with the Company. Such quarterly reports will present margin data from April 1, 2008 forward.

C. Peaking Costs. In its next annual BGSS proceeding, the Company will provide the Parties in a discovery response (subject to a confidentiality agreement) a comparison of the costs of Elizabethtown's bundled peaking supplies and the Company's on-system liquefied natural gas ("LNG") supply. The data to be provided will include a comparison of both historic and projected costs.

3. All Issues Resolved. Except as set forth herein, this Stipulation provides for a final resolution of this proceeding. All issues related to Elizabethtown's BGSS recoverable costs for the BGSS year ending September 30, 2008 are resolved.

4. Effective Date. The Effective Date of this Stipulation shall be the date of a final Board order approving this Stipulation without modifications.

5. Entirety Of Stipulation. This Stipulation represents a mutual balancing of interests and, therefore, is intended to be accepted and approved in its entirety. In the event that the Board does not adopt this Stipulation in its entirety in an Order, then any Party hereto is free to pursue its then-available legal remedies with respect to all issues in this Stipulation as though this Stipulation had not been signed.

6. Binding Effect. It is the intent of the Parties that the provisions hereof be approved by the Board, as appropriate, as being in the public interest. The Parties further agree that they consider the Stipulation to be binding on them for all purposes herein.

7. General Reservation. It is specifically understood and agreed that this Stipulation represents a negotiated agreement and has been made exclusively for the purpose of this proceeding. Except as expressly provided herein, neither Elizabethtown, Board Staff, nor Rate Counsel shall be deemed to have approved, agreed to, or consented to any principle or methodology underlying or supposed to underlie any agreement provided herein. This Stipulation shall not be cited as precedent except for the purpose of enforcing its terms.

WHEREFORE, the Parties hereto do respectfully submit this Stipulation to the Presiding Administrative Law Judge and the Board of Public Utilities and request (i) the Presiding Administrative Law Judge to issue an initial decision approving this Stipulation, and (ii) the Board to issue a Decision and Order approving this Stipulation in its entirety in accordance with the terms hereof.

PIVOTAL UTILITY HOLDINGS, INC.
D/B/A ELIZABETHTOWN GAS

RONALD K. CHEN
PUBLIC ADVOCATE,
STEFANIE A. BRAND,
DIRECTOR, DIVISION OF RATE
COUNSEL

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Mary Patricia Keefe
Vice President

By:


Henry M. Ogden
Assistant Deputy Public Advocate

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Attorney for the Staff of the New Jersey Board of Public Utilities

By:


Geoffrey Gersten, DAG

Dated: June 17, 2009

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